

Minutes
WARRICK COUNTY AREA BOARD OF ZONING APPEALS

Special Meeting/Public Hearing to be held in the Commissioners Meeting Room,
Third Floor, Historic Courthouse,
Boonville, Indiana
July 18, 2018 at 9:00 A.M.

PLEDGE OF ALLEGIANCE

MEMBERS PRESENT: Terry Dayvolt, Paul Keller, Mike Moesner, Jeff Willis, and Mike Winge.

Also present were Morrie Doll, Attorney, Sherri Rector, Executive Director, and Molly Barnhill, Assistant Director.

MEMBERS ABSENT: Jeff Valiant and Doris Horn

Vice Chairman, Terry Dayvolt, explained the rules of procedure.

BZA-SU-18-14

APPLICANT: Liberty Mine, LLC by Alex Messamore, Manager Land Acquisition and Permits

OWNER: Alcoa Fuels Inc, Alcoa Warrick LLC, H&L Farms LLC, Lackehart, Inc C/O Donald H. Keith, Hart, Hart, Peake & Robertson, Tweedy Farms Trust.

PREMISIS AFFECTED: 2720 acres located on the South side of New Harmony Rd and 796 acres located on the South side of Millersburg Rd approximately 1 mile northwest of the intersection formed by Eskew Rd and Millersburgh Rd. Boon & Ohio Twp.

NATURE OF CASE: Applicant requests a Special Use, SU 13, for the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow mineral extraction, storage, and processing in an Urban Area in a "CON" Conservancy & Recreational Area and "A" Agricultural Zoning District (Advertised in the Standard July 5, 2018).

Mrs. Rector stated that yesterday afternoon she received a call from Attorney Stahl representing today both Liberty Mine and Alcoa Fuels. She said she also received an email stating that "Liberty Mine and Alcoa request a continuance of tomorrow's hearing on the SU-13 permit and to either hear it at the next regular meeting or schedule another special meeting. We are still in settlement conference and need more time to work some things out including things that would be addressed at the BZA meeting. We will appear tomorrow and make the request in person."

Dirk Stahl, attorney with Zieman, Stayman, Weitzel, & Shoulders representing Liberty Mine and Alcoa and Alex Messamore, Liberty Mine were present.

Vice-Chairman Dayvolt asked if they wanted to continue with what was presented to the Board yesterday.

Dirk Stahl replied yes sir it is.

Attorney Doll asked Anthony Long if he represented a landowner.

Anthony Long replied he represents H & L Farms, which is named in the petition.

Attorney Doll said would you also join in the request. He stated that way we clearly have a record of an owner.

Rob Phillips stated he represents Save Our Homes, which is the entity that is opposing the permit.

Mrs. Rector said ok.

Attorney Doll asked if there was any debate or comment about the continuance.

Rob Phillips stated they had no objections in regards to their position.

Attorney Doll asked him to sign in.

Rob Phillips stated was from Phillips Law representing Save Our Home a community in Spring Lake Subdivision. He said they had a settlement conference yesterday, which they all agreed that they would continue this hearing today and ask for just a new date.

Attorney Doll asked do you need additional time for purposes of continuing your conversations and settlement talks.

Rob Phillips replied that is correct.

Attorney Doll stated to the members of the Board under our BZA rule 3.8, as Anthony knows, the property owner may request a continuance to a regularly scheduled meeting not to exceed a period that would be the next three regular meeting dates. He said if the request exceeds that total time period then a new notification to adjacent landowners would be required and you would have to pay a continuance fee. He said he didn't know we had such a fee. He stated as long as we are not continuing it more than 90 days or the next three meetings you may in fact grant the motion of the property owners who have joined in this motion to continue today's special meeting. He said in consultation with Sherri and Molly prior to the commencement and in anticipation of this request we looked at the calendar to try to figure out when might be the next appropriate date. He said until we know you have a settlement this meeting could be a lengthy meeting and we are reluctant to set it at a regular night meeting. He said we have done that before and no one had a good time. He said consequently we still feel that it would be best, if the Board agrees to reset this for another daytime special meeting. He stated he knows that is inconvenient for so many people, but we just don't know how long the hearing would take. He said we have looked at timing and the staff would like to do it during a non-meeting week so we are not interfering with APC or regular BZA work. He said the best week available for that

purpose would be the week of August 20th. He said Molly has checked with the availability of the room and there is a conflict on the 21st, which is Tuesday. He said Monday the 20th, Wednesday 22nd, Thursday 23rd, or Friday 24th are available. He said maybe we should ask the applicants and remonstrators if they have any preference among those four days and then we will see what the Board members preferences are. He asked if there was a day of the week that does or doesn't work best for the Board.

Discussion ensued among the Board members about a date.

Jeff Willis said Wednesday's worked best for him but he didn't know is this something we could set on Monday night at the regular meeting so we have (inaudible)

Attorney Doll stated Jeff the problem we have is what we are afraid of is we could end up with a midnight or one a.m.

Jeff Willis said no, not do it at the meeting but set the time (inaudible)

Attorney Doll replied no, we need to set it while all of the parties are present with all due respect. He said it is a good idea but he thinks there would be less likely miscommunication if we would set a date now.

Mrs. Rector stated that Doris has a conflict anyway so she would not be participating.

Attorney Doll said Commissioner.

Bob Johnson, Warrick County Commissioner, stated he just want to remind everybody that we have the Courthouse renovations going on do this room may or may not be available but they would have an area set aside to where we can meet. He said we just have to keep that in mind.

Mike Winge asked if we had the sound and everything available if it would be somewhere else.

Attorney Doll stated we would have to have a recording system wherever we go and he is sure the Commissioners are trying to work it all out.

Bob Johnson stated we would be able to use the same devices that they use for their meeting with the Auditor.

Mrs. Rector said thank you.

Attorney Doll asked Mike Moesner if he had his calendar with him.

Mike Moesner replied no, he doesn't.

Attorney Doll asked if there was someone he could call.

Mike Moesner replied yes.

Attorney Doll asked the Vice-Chairman to take a brief recess.

Mrs. Rector asked if the applicant and remonstrators were willing for that week.

Attorney Doll asked if that week worked for everyone else.

Anthony Long stated Monday, of that week; he has to leave that evening to go to Chicago.

Mrs. Rector stated you could do it on the 20th.

Anthony Long said yes he could do it on the 20th.

Attorney Doll said but not Wednesday the 22nd or the rest of the week. He asked if he would be in Chicago the whole week.

Dirk Stahl stated he thinks the 20th would work for them as well. He said he hasn't spoken with his clients but thought they would have enough leeway from today's date to make that work.

Rob Phillips stated the 20th would work for them.

Attorney Doll asked Jeff Willis if he could make Monday work.

Vice-Chairman Dayvolt stated let us take a five-minute recess and let Mike call.

Attorney Doll asked if anyone else had a prohibition on the 20th.

Attorney Doll said the question Mike is for the 20th.

Mrs. Rector stated at 9:00 a.m.

Five-minute recess.

Vice-Chairman Dayvolt brought the meeting to order.

Attorney Doll asked where we stood on the 20th.

Rob Phillips stated Mr. Phillips, his father Mark, could not do the 20th.

Attorney Doll asked Anthony if he could be there any other day that week.

Anthony Long replied do not let his calendar prevent this from going forward. He said he would have someone else here.

Attorney Doll asked if Mark, Liberty Mine, or Alcoa available any other day of the week. He added are the Board members available any other day of the week.

Mike Moesner replied he has to go on the trip. He said he could postpone it one day but he cannot postpone it middle of the week.

Attorney Doll stated he is just trying to make certain we would have a quorum.

Vice-Chairman Dayvolt stated the only other thing would be if Jeff Valiant could be here but Doris Horn cannot vote.

Attorney Doll stated that Doris has a conflict, her husband is an employee of Alcoa and obviously, this could have some economic implications to them as the owner of this. He said she would have an economic interest, which meets the conflict of interest definition.

Vice-Chairman Dayvolt said if Jeff could be here we would have five.

Attorney Doll stated if Jeff could be here but we have no guarantee that his scheduling conflict would be resolved. He asked whom else are we missing.

Mrs. Rector said that is all.

Attorney Doll stated just those two. He said to Mike Moesner it sounds like it was easier for you to reschedule a Monday than a weekday.

Mike Moesner replied yes, the trip and the whole planning is going and he has to go.

Attorney Doll asked if he was available to come back at the end of the week early perhaps on a Friday.

Mike Moesner replied they were planning to come back on Friday but not being here on a Friday.

Attorney Doll said even if we started at 1:00 p.m.

Mike Moesner stated that is a possibility.

Attorney Doll stated he doesn't want to pry but how far...

Mike Moesner said he thought it was a four-hour drive or something like that. He said if things work out he could possibly be here by then.

Attorney Doll stated if we set it up for the 24th and start it in the afternoon instead of the morning does that work or a disadvantage for any of the other Board members. He said it maybe that they

would have an agreement that would take a half hour. He said to the applicant and property owner remonstrators what about Friday the 24th starting in the afternoon.

Rob Phillips said Friday the 24th starting at 1:00 or 1:30 p.m. they could do that.

Alex Messamore stated Liberty could do that.

Attorney Doll asked if Alcoa could also accommodate that date.

Dirk Stahl replied yes, they said they don't care what date.

Attorney Doll asked Anthony Long if there was any chance he would be back by Friday afternoon.

Anthony Long replied no, but that is okay he would have someone here that he is collateral for this issue.

Attorney Doll asked Sherri what she thought about Friday afternoon at 1:30.

Mrs. Rector replied 1:00 the earlier the better.

Attorney Doll stated there is a pending request no motion has been made. He said pursuant to rule 3.8 to continue today's special meeting made by two of the owners of the site it appears that if the motion, if made, seconded, and approved, would reset this for Friday, August 24th beginning at 1:00 p.m. in this room, unless we have to move elsewhere. He said could we get any more variables to this. He added unless we have to move elsewhere because of reconstruction that may occur in this room.

Mike Winge made a motion to approve the statement with all of the conditions that Attorney Doll made. The motion was seconded by Mike Moesner and unanimously approved.

Attorney Doll stated the only other thing are there any other issues to be brought up by other parties.

Dirk Stahl replied no sir.

Attorney Doll stated Mr. Chairman he thinks we are ready for a final motion.

Vice-Chairman asked for a motion to adjourn.

Mike Winge made a motion to adjourn. The motion was seconded by Paul Keller and unanimously carried.

The meeting adjourned at 9:17 a.m.

Terry Dayvolt

ATTEST:

The undersigned Secretary of the Warrick County Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of the said Board at their monthly meeting held July 18, 2018.

Sherri Rector, Executive Director